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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 709,743	11 13 2000	Michael Fred Enkler	031683.002575US	4706

7590 08 27 2002

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EXAMINER
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SALVATORE, LYNDIA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08 27 2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/709,743

Applicant(s)

ENKLER ET AL.

Examiner

Lynda M Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1 ☐ Certified copies of the priority documents have been received.
- 2 ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- 3 ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other.

**DETAILED ACTION**

1. Applicant's amendment to claims in paper No. 8 has been entered as requested.
2. Applicant's amendment is sufficient to overcome the 35 USC 112 2<sup>nd</sup> rejections of claims 1,10-14 and 17 as set forth in the last Office Action.

***Claim Rejections - 35 USC § 112***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 15 and 16 stand rejected under 35 USC 112 2<sup>nd</sup> as set forth in section 8 of the last Office Action.

***Claim Rejections - 35 USC § 102/103***

5. Claims 1,13,17-22 and 24 rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alts, US 6,145,617.  
Said claims were previously rejected under 35 U.S.C. 102 (e) but are now rejected under 102/103 since Applicant's amendment to claims 1 and 17 recite new property limitations (i.e., a long-term thermal loadability at 200°C for three weeks) which are not explicitly taught by the Alt's reference.

With respect to the long-term thermal loadability limitation, although Alts does not explicitly teach the claimed feature of long-term thermal loadability at 200°C of three weeks, it is reasonable to presume that said property is inherent to the Alts invention. Support for said presumption is found in the use of like materials (i.e., fiber and foam materials) and the use of like processes (heat and sound insulation), which would result in the claimed property. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 495

In addition, the presently claimed property of long-term thermal loadability at 200°C of three weeks would obviously have been present once the Alts product is provided. *In re Best*, 195 USPQ at 433

Therefore, as set forth above, claims 1,13,17-22 and 24 are now rejected under 35 USC 102/103 in view of Alts.

### ***Claim Rejections - 35 USC § 103***

6. Claims 2,3,4-12,14-16 and 23 stand rejected under 35 USC 103(a) as being unpatentable over Alts, US 6,145,617 as set forth in section 11 the last Office action.

### ***Response to Arguments***

7. Applicant's argument with respect to indefinite claims 15 and 16 (page 4), that "grid-like" is well known in the art has been considered but is not found to be persuasive. Applicant does not need to define "grid-like" in terms of other prior art, but needs to define "grid-like" in the context of the instant invention. The use of the term "grid-like" in the present context is boundary-less. In other words, is it a "grid" or not? Applicant does not properly define the term "grid-like" in clear concise language on page 7, lines 27-31 of the specification. Therefore claims 15 and 16 stand rejected under 35 USC 112 2<sup>nd</sup>.

8. Applicant's argument with respect to the 35 USC 102(e) rejections (Page 5 and 6) has been considered but is not found to be persuasive. Applicant argues that Alts is directed to a multi-functional insulation for use in vehicles and that the present claims are directed to heat-insulating and soundproofing lining for the engine compartment. Applicant is invited to re-read the Examiners arguments set forth in the last Office Action. Alts specifically teaches a

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fiber/foam composite to obtain sound absorption/insulation (Section 11). Furthermore, Alts specifically teaches an embodiment that may be used in the engine compartment of a motor vehicle (Section 11). Moreover, the Applicant admits that layer 13 of the Alts invention *is* comparable to the duroplastic foam layer of the present invention (Page 5, paragraph 5).

Therefore, it is unclear to the Examiner how the Alts invention differs in scope from the claimed invention.

9. With regard to Applicant's argument to the 103(a) rejection of claims 2,3,4-12,14-16, and 23 which are now based on the relating 102/103 arguments above, said argument is not found to be persuasive because the new 102/103 rejection stands and no new arguments have been presented.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070.

The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

ls  
August 23, 2002

  
CHERYL A. KUSKA  
PATENT EXAMINER